

REMARKS

The Examiner indicates in the Office Action that Applicant's March 1, 2004 Request for an Interference does not comply with the Board Rule 202(a), (d), (e) which took effect on September 13, 2004. Applicant asserts that the March 1, 2004 Request to Invoke the Interference met all the rules of 37 C.F.R. 1.601 et seq. Accordingly, the Request for an Interference was properly and timely filed. Since the Request was filed before the new rules, the Examiner must treat the Applicants' Request under the old rules.


The Examiner indicates that "Applicant has an earlier constructive reduction to practice that is later than the apparent earliest constructive reduction to practice for a patent claiming the interference subject matter, and thus must show why it would prevail on priority under 35 U.S.C. 102(g). Board Rule 202(d). Such showing is not sufficient unless it would, if un rebutted, support a determination of priority in favor of the party making the showing. Board Rule 202(e)(1).

The Examiner's attention is drawn to the Affidavits of Elizabeth S. McGowan, Peter J. Murfey and Matthew S. Brown. If the Examiner reviews these affidavits, closely examining the attached record of invention, she will notice that the invention was first disclosed to David Dobbs and Mark Spreitzer, who are the inventors of U.S. Patent No. 6,549,001. Accordingly, the original request to revoke the Interference on its face shows that the Applicants, prior to the constructive reduction to practice of U.S. Patent No. 6,549,001, disclosed the invention to the inventors of U.S. Patent No. 6,549,001. Thus, this information is sufficient enough for a determination of priority in favor of Applicants.

Accordingly, Applicants submit that since the Request for Interference was filed prior to the instituting of the new Board rules, the old rules must be applied. Further, Applicants assert that the information previously presented, if unrebutted, illustrates priority in Applicants' favor.

Thus, Applicants respectfully request that the Board institute an Interference in the present application. Should there be any questions regarding the present application, the Examiner or Board should not hesitate to contact the undersigned at (248) 641-1600.

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Respectfully submitted,
By: 
W. R. Duke Taylor
Reg. No. 31,306

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

WRDT/lkj